

Timothy Baker

Director



Timothy Baker is a Director in our Dispute Resolution practice and in the International Arbitration sector. He has experience in construction, infrastructure, energy disputes, commercial litigation and alternative dispute resolution (mediation/arbitration), insurance, insolvency proceedings (including business rescue) and Africa/English law disputes.

About Timothy

Timothy specialises in high-end, complex, contractual and commercial disputes. He is adept in all forms of litigation and alternative dispute resolution (ADR), including arbitration and mediation.

Timothy has considerable experience in the construction/infrastructure/energy space. He also handles disputes and enforcement of claims in African jurisdictions, in particular where the contracts in question are subject to English law. He is experienced in all aspects of insolvency, in particular liquidations and business rescues, and insurance claims (with a focus on subrogated claims/third party recoveries).

In addition, Timothy has experience negotiating and advising on various forms of construction contracts, including NEC, GCC, JBCC and FIDIC-based EPC and O&M contracts, in particular in relation to infrastructure/energy projects. His disputes experience is invaluable in assessing and negotiating key terms and risk items relating to such projects.

Timothy is dual qualified (South African attorney; solicitor of England & Wales), and has experience in the English courts.

Timothy joined Cliffe Dekker Hofmeyr as a Director in 2017.

Credentials

Education

- LLB, University of Cape Town
- Year of admission as an attorney: 2003
- Year of enrolment as a solicitor of England & Wales: 2008

Experience

Contact Timothy

+27 (0)21 481 6308

timothy.baker@cdhlegal.com

[Timothy on LinkedIn](#)

Expertise

[Dispute Resolution](#)

[Business Rescue, Restructuring & Insolvency](#)

[Construction & Engineering](#)

[International Arbitration](#)

Location

Cape Town

Language

English

- **Multiple disputes**

Advising and representing in multiple disputes relating to two solar photovoltaic projects in South Africa, including: resisting claim under Parent Company Guarantee; settlement of a claim under a counter indemnity; settling claim by sub-contractor for payment under a guarantee; advising on project and finance documents and ancillary contracts; cross-border advice; shareholder disputes and claims.

- **Independent solar energy provider**

Representing a leading international independent solar energy provider in a dispute with the main Contractor in relation to two solar photovoltaic projects in South Africa. Matter involved: urgent High Court applications relating to on-demand guarantees and irrevocable standby letters of credit (LC's); attachment of LC monies in Japan; successful representation in an arbitration relating to termination (and termination notices) under the EPC (FIDIC) contracts, "recovery plans", delay and cross-default provisions between the two projects; claims against the Contractor's parent company in Germany (under Parent Company Guarantee); cross-border insolvency advice.

- **Availability Liquidated Damages**

Advising the Employer on a claim for Availability Liquidated Damages (ALD's) against the Contractor under an EPC contract, relating to an Event at a Wind Farm, giving rise to a loss of multi-million Rand loss. Complex issues relating to calculation of ALD's and insurance deductible liability. The Wind Farm is one of the largest wind-farms in Southern Africa. The project cost R2.7 billion (US\$199 million). At the time of its completion it was the largest wind-farm in the Western Cape.

- **Contractual term**

Representing the Main Contractor in a dispute with two of its sub-contractors relating to payment for additional works on wind projects. Complex issues relating to scope of works and contractual terms under EPC contract. The Main Contractor is a wholly-owned subsidiary of one of the largest wind power developers in the world.

- **Regulatory Accounting System**

Advising an Oil Major in South Africa in regard to the Regulatory Accounting System (RAS) pricing for petroleum and representing in contractual disputes with franchisees.

- **Development rights under a lease agreement**

Representing a listed infrastructure company in a dispute relating to development rights under a lease agreement (energy generating facility inclusive of wind energy, solar energy, hydro-electrical energy or biomass energy facilities), objections and related Environmental Impact Assessment (EIA).

- **Business rescue**

Acting for a global logistics and international transport company in a claim against a company in business rescue relating to a project in Togo. Matter involved setting aside the business rescue plan and removal of the business rescue practitioner, and advising on various contingencies.

- **Collateral Management Finance Agreement**

Acting for a major bank in recovery proceedings pursuant to a Collateral Management Finance Agreement and a Collateral Finance Agreement relating to goods in Liberia. Insurance and cross-border considerations. Agreements governed by English law.

- **Marine and offshore engineering company**

Representing a marine and offshore engineering company in a dispute relating to acid tanks at the Tsumeb plant in Namibia.

- **Share Sale and Purchase Agreements**

Advising companies in Botswana regarding Share Sale and Purchase Agreements governed by English law.

- **Mining and oil & gas company**

Acting for an Australian mining and oil & gas company in a contractual dispute relating to the Tormin mineral sands project on the West coast of South Africa – referral to oral evidence and complex contractual interpretation issues.

- **Investment bank**

Acting for a major investment bank in recovery and business rescue proceedings. Complex contractual/recovery issues involving fraud, threatened court proceedings by creditors and the overseas holding company being under administration. Matter settled and recovery made.

- **International consultancy JV**

Settled dispute for an international consultancy JV in a matter against the Government of Lesotho in relation to the USA Millennium Project.

- **Shareholder and mining rights**

Acting for Khazakstani company in contractual dispute relating to shareholder rights, mining rights and operation in Kenya.

- **Insurer**

Representing Insurer in subrogated third party recovery claim following fire event at the Mitchells Plain hospital.

- **Renewable energy project developer**

Representing a French sponsor/developer of two 75MW solar PV projects in the South African renewable energy procurement programme - negotiation and conclusion of EPC and O&M detailed heads of terms.

- **Renewable energy project developer**

Advising a renewable energy project developer on compliance with the provisions of the RFP, bid development and the conclusion of EPC and O&M detailed heads of terms for two 75MW solar PV projects; subsequent advice on EPC/O&M/operational issues/disputes.

News

[Early Detection of Fraud and/or Corruption in Arbitrations: Lessons from the Recent English Court Decisions?](#)

Two recent English Commercial Court decisions serve as a warning to dishonest parties hoping to exploit the arbitral process to obtain or enforce fraudulent or corrupt arbitration awards. The English courts generally follow a non-interventionist approach when it comes to the challenge of enforcement of arbitral awards. However, these recent decisions signify that the Commercial Court can and will use its statutory powers to intervene, investigate and order disclosure to uphold the legitimacy of the arbitral process and parties' rights.

[Business rescue with an ulterior purpose](#)

A financially distressed company facing a liquidation application may be tempted to try and avoid or delay the inevitable by launching a business rescue application in order to suspend the liquidation process. However, if there is no merit in such an application, it will inevitably be found by the courts to be an abuse of process and the stratagem will thus be doomed to failure. The Supreme Court of Appeal in the case of PFC Properties (Pty) Ltd v Commissioner for the South African Revenue Services and Others (543/21; 409/22) ZASCA 111; (1) SA 400 (SCA) (21 July 2023) adjudicated precisely this scenario.

[Pipped at the post? \(the pitfall of instituting a claim in the wrong forum and how this relates to the relevant arbitration clause and underlying agreement\)](#)

As a result of court backlogs and delays, and the public nature of court hearings, it has become common place for commercial contracts to include an arbitration clause. Arbitrations are a form of alternative dispute resolution whereby a dispute is resolved through a private procedure before an arbitrator instead of a judge. An arbitration clause normally seeks to include all disputes between the parties arising out of an agreement.

[Payment on demand? A consideration of on demand guarantees](#)

It is common for a performance guarantee from a financial institution to be provided by a contractor to its employer in a construction project. It is also common for such guarantees to be formulated as an "on demand" guarantee. This is akin to a letter of credit and, provided the terms and requirements set out in the guarantee are complied with, the employer can call up the guarantee notwithstanding any contractual dispute that there may be in the underlying contract between the employer and the contractor (this is different to a guarantee that is not on demand where the contractor can resist payment on the basis that there is an unresolved dispute pending between the contractor and the employer).

[To sue, or not to sue? A discussion on agreements not to sue](#)

Parties sometimes include a clause in their agreements to the effect that they are not entitled to sue one another (what is known as a pactum de non petendo) (pactum). The question arises as to whether such clauses are enforceable, or whether they infringe on the constitutional rights of the would-be suing party and / or are contrary to public policy.

[All news by Timothy Baker →](#)

Recognition

- Legal 500 EMEA 2020 - 2024 recommended Timothy in construction.
- Legal 500 EMEA inaugural Arbitration Powerlist – Africa 2020.